



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/670,756	09/27/2000	Kenneth Rhodes	MNI-070CP4	6507

959 7590 07/23/2002

LAHIVE & COCKFIELD  
28 STATE STREET  
BOSTON, MA 02109

EXAMINER

MURPHY, JOSEPH F

ART UNIT	PAPER NUMBER
----------	--------------

1646

DATE MAILED: 07/23/2002

//

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

09/670,756

**Applicant(s)**

RHODES ET AL.

**Examiner**

Joseph F Murphy

**Art Unit**

1646

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on 15 May 2002
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☐ Claim(s) 8, 10 and 55-65 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 8, 10 and 55-65 are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
- \_\_\_\_\_ of the certified copies of the priority documents have been received by the National Stage application from the International Bureau (PCT Rule 17.2(a)).
- See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### DETAILED ACTION

Claims 1-7, 9 and 11-54 were cancelled in Paper No. 10, 5/15/2002. Applicant's election with traverse of Group XIV in Paper No. 10, 5/15/2002 is acknowledged.

#### *Election/Restrictions*

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 8, 10, 55-65, drawn to a peptide with an amino acid sequence as set forth in SEQ ID NO: 14, classified in class 530, subclass 350.
- II. Claims 8, 10, 55-65, drawn to a peptide with an amino acid sequence as set forth in SEQ ID NO: 16, classified in class 530, subclass 350.
- III. Claims 8, 10, 55-65, drawn to a peptide with an amino acid sequence as set forth in SEQ ID NO: 18, classified in class 530, subclass 350.
- IIII. Claims 8, 10, 55-65, drawn to a peptide with an amino acid sequence as set forth in SEQ ID NO: 20, classified in class 530, subclass 350.
- V. Claims 8, 10, 55-65, drawn to a peptide with an amino acid sequence as set forth in SEQ ID NO: 22, classified in class 530, subclass 350.
- VI. Claims 8, 10, 55-65, drawn to a peptide with an amino acid sequence as set forth in SEQ ID NO: 24, classified in class 530, subclass 350.
- VII. Claims 8, 10, 55-65, drawn to a peptide with an amino acid sequence as set forth in SEQ ID NO: 26, classified in class 530, subclass 350.
- VIII. Claims 8, 10, 55-65, drawn to a peptide with an amino acid sequence as set forth in SEQ ID NO: 28, classified in class 530, subclass 350.

Art Unit: 1646

IX. Claims 8, 10, 55-65, drawn to a peptide with an amino acid sequence as set forth in SEQ ID NO: 30, classified in class 530, subclass 350.

The inventions are distinct, each from the other, for the following reasons:

Inventions I-IX are independent and distinct, each from the other, because they are products which possess characteristic differences in structure and function, and each has an independent utility, that is distinct for each invention which cannot be exchanged.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Art Unit: 1646

*Advisory Information*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph F. Murphy whose telephone number is 703-305-7245. The examiner can normally be reached on M-F 7:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yvonne Eyler can be reached on 703-308-6564. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3014 for regular communications and 703-308-0294 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0196.



Joseph F. Murphy, Ph. D.  
Patent Examiner  
Art Unit 1646  
July 17, 2002

*James R. ...*  
DAVID S. HOME